UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2001/65
1 February 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 11 (d) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Report of the Special Rapporteur on the independence of judges and lawyers Dato' Param Cumaraswamy, submitted in accordance with Commission resolution 2000/42

GE.01-10830 (E)

Executive summary

This is the seventh annual report of the Special Rapporteur whose mandate, created by Commission resolution 1994/41, calls upon him:

(a) To inquire into any substantial allegations transmitted to him and report his conclusions thereon;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned;

(c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers.

The report contains eight chapters dealing with his terms of reference, methods of work, the activities undertaken during the year, some theoretical issues, professional standards, some judicial decisions reflecting the independence and impartiality of the judiciary, situations in 41 countries or territories, and his conclusions and recommendations. During the year the Special Rapporteur sent out several interventions including five urgent appeals and seven urgent appeals in association with other special rapporteurs.

In the course of the year, the Special Rapporteur undertook visits to South Africa, Belarus and the Slovak Republic and separate reports on these missions will be before the Commission.

The Special Rapporteur has included in the present document a summary of his observations with respect to his attendance of the trial of H.M. Soeharto from 30 August to 2 September and from 13 to 15 September 2000. He has also summarized the developments concerning the defamation suits pending against him in Malaysia. With regard to the United Kingdom of Great Britain and Northern Ireland, the Special Rapporteur has expressed his continued concerns over the investigations into the murders of Patrick Finucane and Rosemary Nelson. With regard to South Africa, the Special Rapporteur has expressed his concern regarding a recent proposal by the Government to alter the regulation of the legal profession.

The Special Rapporteur has also drawn the attention of the Commission to the invitations extended to him by the Governments of Mexico, Saudi Arabia and Zimbabwe. The Special Rapporteur intends to undertake missions to those countries during the course of this year. The details, including the dates, are currently being discussed.

Among the recommendations, the Special Rapporteur has once again called upon the Government of the United Kingdom of Great Britain and Northern Ireland to establish an independent judicial inquiry into the murder of Patrick Finucane.

CONTENTS

		Paragraphs	Page
Introduction		1 - 2	6
I.	TERMS OF REFERENCE	3 - 6	6
II.	METHODS OF WORK	7	9
III.	ACTIVITIES OF THE SPECIAL RAPPORTEUR	8 - 27	9
	A. Consultations	8 - 11	9
	B. Missions/visits	12 - 15	10
	C. Communications with governmental authorities	16 - 20	10
	D. Cooperation with intergovernmental and non-governmental organizations	21	11
	E. Cooperation with other United Nations procedures and bodies	22 - 27	11
IV.	THEORETICAL ISSUES	28 - 30	13
	A. Judicial corruption	28 - 29	13
	B. Human rights defenders	30	13
V.	STANDARDS	31 - 32	14
VI.	JUDICIAL DECISIONS REFLECTING THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY	33	14
VII.	SITUATIONS IN SPECIFIC COUNTRIES OR TERRITORIES	34 - 244	14
	Algeria	36 - 38	15
	Argentina	39 - 41	15
	Australia	42 - 44	16
	Azerbaijan	45 - 50	16
	Bahrain	51 - 52	17
	Belarus	53 - 55	18

CONTENTS (continued)

		Paragraphs	Page
VII.	SITUATIONS IN SPECIFIC COUNTRIES OR TERRITORIES (continued)		
	Brazil	56 - 61	18
	Burundi	62 - 63	19
	Cameroon	64 - 65	20
	Chile	66 - 67	20
	China	68 - 72	20
	Colombia	73 - 84	21
	Democratic Republic of the Congo	85 - 87	23
	Egypt	88 - 92	24
	Gambia	93 - 95	24
	Guatemala	96 - 102	25
	Indonesia	103 - 114	26
	Iran (Islamic Republic of)	115 - 118	28
	Israel	119 - 121	28
	Jamaica	122 - 123	29
	Kenya	124 - 127	29
	Kyrgyzstan	128 - 131	30
	Lebanon	132 - 135	30
	Malaysia	136 - 153	31
	Mexico	154 - 160	34
	Myanmar	161 - 162	35
	Nepal	163 - 165	35
	Pakistan	166 - 170	36
	Palestine	171 - 177	37
	Panama	178 - 182	38
	Peru	183 - 184	39
	Senegal	185 - 189	39
	Slovakia	190 - 196	40

CONTENTS (continued)

		Paragraphs	Page
VII.	SITUATIONS IN SPECIFIC COUNTRIES OR TERRITORIES (continued)		
	South Africa	197 - 201	42
	Spain	202 - 205	42
	Sri Lanka	206 - 212	43
	United Kingdom of Great Britain and Northern Ireland	213 - 229	44
	United States of America	230 - 234	47
	Yemen	235 - 237	48
	Yugoslavia	238 - 242	49
	Zimbabwe	243 - 244	49
VIII.	CONCLUSIONS AND RECOMMENDATIONS	245 - 252	50
	A. Conclusions	245 - 249	50
	B. Recommendations	250 - 252	50

Introduction

1. The present report is submitted pursuant to Commission on Human Rights resolution 2000/42. It is the seventh annual report to the Commission by the Special Rapporteur since the mandate was established by the Commission in its resolution 1994/41, renewed in resolution 2000/42 and endorsed by the Economic and Social Council in its decision 2000/264 (see also E/CN.4/1995/39, E/CN.4/1996/37, E/CN.4/1997/32, E/CN.4/1998/39, E/CN.4/1999/60 and E/CN.4/2000/61).

2. Chapter I of the present report contains the terms of reference for the discharge of the mandate. Chapter II refers to the methods of work applied by the Special Rapporteur in the discharge of his mandate. In chapter III, the Special Rapporteur presents an account of the activities undertaken within the framework of his mandate in the past year. Chapter IV provides a brief discussion on theoretical issues which the Special Rapporteur considers to be important for the development of an independent and impartial judiciary. Chapter V describes standards and guidelines for judges and lawyers that have been adopted or are in the process of being adopted by various associations around the world. Chapter VI contains a brief summary of judicial decisions asserting the importance of and the principle of judicial independence. Chapter VII contains brief summaries of urgent appeals and communications to and from governmental authorities, along with observations of the Special Rapporteur. Chapter VIII contains the conclusions and recommendations of the Special Rapporteur.

I. TERMS OF REFERENCE

3. At its fiftieth session, the Commission on Human Rights, in resolution 1994/41, noting both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights, requested the Chairman of the Commission to appoint, for a period of three years, a special rapporteur whose mandate would consist of the following tasks:

(a) To inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned;

(c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers.

4. Without substantially changing the mandate, the Commission endorsed in its resolution 1995/36 the decision of the Special Rapporteur to use, beginning in 1995, the short title "Special Rapporteur on the independence of judges and lawyers".

5. In resolutions 1995/36, 1996/34, 1997/23, 1998/35, 1999/31 and 2000/42 the Commission on Human Rights took note of the annual reports of the Special Rapporteur, expressing appreciation of his working methods, and requested him to submit another annual report on the activities relating to his mandate to the Commission on Human Rights.

6. Several resolutions adopted by the Commission on Human Rights at its fifty-sixth session are also pertinent to the mandate of the Special Rapporteur and have been taken into consideration in examining and analysing the information brought to his attention with regard to various countries. These resolutions are, in particular:

(a) Resolution 2000/13 on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, in which the Commission encouraged all human rights treaty bodies, special procedures and other human rights mechanisms regularly and systematically to take a gender perspective into account in the implementation of their mandates;

(b) Resolution 2000/29 on hostage-taking, in which the Commission urged all thematic special rapporteurs and working groups to continue to address, as appropriate, the consequences of hostage-taking in their forthcoming reports to the Commission;

(c) Resolution 2000/30 on human rights and terrorism, in which the Commission urged all relevant human rights mechanisms and procedures, as appropriate, to address the consequences of the acts, methods and practices of terrorist groups in their forthcoming reports to the Commission;

(d) Resolution 2000/38 on the right to freedom of opinion and expression, in which the Commission invited the working groups, representatives and special rapporteurs of the Commission on Human Rights to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression as affirmed in the relevant human rights instruments;

(e) Resolution 2000/39 on human rights in the administration of justice, in particular juvenile justice, in which the Commission called upon all special rapporteurs, special representatives and working groups of the Commission to continue to give special attention to questions relating to the effective protection of human rights in the administration of justice, including juvenile justice, and to provide, wherever appropriate, specific recommendations in this regard, including proposals for advisory service and technical assistance measures;

(f) Resolution 2000/40 on the incompatibility between democracy and racism, in which the Commission invited the mechanisms of the Commission and the treaty bodies to continue to pay particular attention to violations of human rights stemming from the rise of racism and xenophobia in political circles and society at large, especially as regards their incompatibility with democracy;

(g) Resolution 2000/52 on the rights of persons belonging to national or ethnic, religious and linguistic minorities, in which the Commission called upon special representatives, special rapporteurs and working groups of the Commission to continue to give attention, within their respective mandates, to situations involving minorities;

(h) Resolution 2000/68 on impunity, in which the Commission invited the special rapporteurs and other mechanisms of the Commission to continue to give due consideration to the issue of impunity in the discharge of their mandates;

(i) Resolution 2000/85 on the rights of the child, in which the Commission recommended that, within their mandates, all relevant human rights mechanisms, in particular special rapporteurs and working groups, regularly and systematically take a child's rights perspective into account in the implementation of their mandates, especially by paying attention to particular situations in which children are in danger and where their rights are violated, and that they take into account the work of the Committee on the Rights of the Child;

(j) Resolution 2000/86 on human rights and thematic procedures, in which the Commission requests the thematic special rapporteurs, representatives, experts and working groups:

(i) To make recommendations for the prevention of human rights violations;

(ii) To follow closely and reflect in their reports progress made by Governments in the investigations carried out within their respective mandates;

(iii) To continue close cooperation with relevant treaty bodies and country rapporteurs;

(iv) To include in their reports information provided by Governments on follow-up action, as well as their own observations thereon, including in regard to both problems and improvements, as appropriate;

(v) To include regularly in their reports gender-disaggregated data and to address the characteristics and practice of human rights violations under their mandates that are specifically or primarily directed against women, or to which women are particularly vulnerable, in order to ensure the effective protection of their human rights;

(vi) To address also in their reports the characteristics and practice of human rights violations under their mandates that are specifically or primarily directed against children, or to which children are particularly vulnerable, in order to ensure the effective protection of their human rights, and, if possible, to include also age-disaggregated data.

The resolution also requested the thematic rapporteurs, representatives, experts and working groups to include in their reports comments on problems of responsiveness and the result of analyses, as appropriate, in order to carry out their mandates even more effectively, and to include also in their reports suggestions as to areas where Governments might request relevant assistance through the programme of advisory services administered by the Office of the High Commissioner for Human Rights.

II. METHODS OF WORK

7. The Special Rapporteur, in the seventh year of his mandate, continued to follow the methods of work described in his first report (E/CN.4/1995/39, paras. 63-93).

III. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Consultations

8. The Special Rapporteur visited Geneva for his first round of consultations from 2 to 8 April 2000 in order to present his report to the Commission at its fifty-sixth session, and returned to Geneva from 17 to 21 April after attending a workshop on judicial integrity in Vienna. During this period the Special Rapporteur met with representatives of the regional groups to brief them on his work and to answer any questions they might have. He also held consultations with representatives of the Governments of Saudi Arabia and South Africa. In addition, he held a briefing for interested non-governmental organizations and also met individually with several NGOs.

9. The Special Rapporteur visited Geneva from 28 May to 11 June 2000 for his second round of consultations and to attend the 7th meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, which was held from 5 to 9 June 2000. The Special Rapporteur also attended the Expert Consultation Workshop on Special Procedures and the Treaty Bodies: Forging New Relationships, organized by the Carter Center and the Jacob Blaustein Institute, which was held on 1 and 2 June 2000. During his visit, the Special Rapporteur met with the Permanent Representative of France to the United Nations Office at Geneva.

10. The Special Rapporteur again visited Geneva from 10 to 14 October for consultations. During the visit the Special Rapporteur met with the Permanent Representatives of Egypt, Saudi Arabia and Zimbabwe.

11. The Special Rapporteur travelled to Geneva on 24 November 2000, in order to prepare for the mission to Slovakia which took place from 27 to 30 November 2000. On 24 November 2000, the Special Rapporteur met with the Permanent Representative of Lebanon.

B. Missions/visits

12. During 2000, the Special Rapporteur undertook three in situ missions. The first mission, to South Africa, took place from 7 to 13 May 2000. The second mission, to Belarus, took place from 12 to 17 June 2000. Owing to the urgency of the situation the Special Rapporteur also conducted a short mission to Slovakia from 27 to 29 November 2000. The reports of these missions, containing his findings, conclusions and recommendations, can be found in addenda to the present report. During the year the Special Rapporteur also travelled to Indonesia from 30 August to 2 September 2000 and from 13 to 15 September 2000 to observe the proceedings in the trial of H.M. Soeharto.

13. During the period under review the Special Rapporteur informed the Government of Zimbabwe of his wish to carry out an in situ investigation. At the fifty-sixth session of the Commission of Human Rights the Government of Zimbabwe indicated its willingness to facilitate such a mission. Details are currently being negotiated. In conjunction with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, he informed the Governments of India and Pakistan of his wish to carry out a joint in situ investigation. He also reminded the Government of Egypt of his previous requests to undertake a mission.

14. The Special Rapporteur informed the Government of Mexico on 13 September 2000 of his wish to delay the conduct of the mission to Mexico until 2001. The Special Rapporteur felt that owing to the significant political changes that were taking place in the country due to the election of a new Government, it was most desirable that the mission take place after the new Government assumes office.

15. During his visit to Geneva from 10 to 14 October 2000, the Special Rapporteur met with the Permanent Representative of Saudi Arabia, who reiterated his Government's support for the conduct of an in situ mission this year. Details and the dates are being discussed with the Permanent Mission.

C. Communications with governmental authorities

16. During the period under review, the Special Rapporteur transmitted five urgent appeals to the following States: Brazil, Jamaica, Slovakia (2) and United States of America.

17. Seeking to avoid unnecessary duplication of the activities of other thematic and country rapporteurs, the Special Rapporteur has joined during the past year with other special rapporteurs and working groups to transmit seven urgent appeals on behalf of individuals to the Governments of the following six countries: Algeria, together with the Special Rapporteur on torture and the Special Rapporteur on violence against women; Argentina, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; Colombia, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; Democratic Republic of the Congo (2), together with the Special Rapporteur on the situation of human rights in the Democratic Republic of Congo, the Special Rapporteur on torture and the Special Rapporteur on

the promotion and protection of the right to freedom of opinion and expression; Israel, together with the Special Rapporteur on torture; Lebanon, together with the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion.

18. The Special Rapporteur transmitted 42 communications to the governmental authorities of the following: Australia, Azerbaijan (2), Bahrain, Belarus, Brazil (2), Chile, China, Colombia (2), Egypt, Guatemala (4), Indonesia, Israel, Jamaica, Kenya, Lebanon, Malaysia, Mexico (3), Nepal, Pakistan (4), Palestine, Panama, Spain (2), Sri Lanka (2), United Kingdom of Great Britain and Northern Ireland (2), United States of America, Yemen and Yugoslavia (2). The Special Rapporteur also sent two joint interventions to the Islamic Republic of Iran, together with the Special Representative on the situation of human rights in the Islamic Republic of Iran, and Senegal, together with the Special Rapporteur on torture.

19. The Special Rapporteur received replies to urgent appeals from the Governments of: Algeria, Argentina, Brazil, Cameroon, Colombia, Lebanon, Slovakia, and United States of America.

20. Replies to communications were received from the governmental authorities of: Australia, Azerbaijan, Bahrain, Belarus, Brazil, China, Colombia, Egypt, Gambia, Kenya, Malaysia, Mexico, Nepal, Palestine, Panama, Peru, Senegal, Spain, Sri Lanka, United Kingdom of Great Britain and Northern Ireland, United States of America and Yemen. Other communications were received from the Governments of Azerbaijan, Colombia and Guatemala.

D. Cooperation with intergovernmental and non-governmental organizations

21. The Special Rapporteur has continued the dialogue with intergovernmental and non-governmental organizations in the implementation of his mandate and thanks these organizations for their cooperation and assistance during the year.

E. Cooperation with other United Nations procedures and bodies

1. Special rapporteurs and working groups of the Commission on Human Rights

22. The Special Rapporteur has continued to work closely with other special rapporteurs and working groups. As previously indicated, in order to avoid duplication he has, where appropriate, made joint interventions with other special rapporteurs and/or working groups. On issues relevant to his mandate, the Special Rapporteur makes reference in the present report to reports of other special rapporteurs and working groups.

2. The Centre for International Crime Prevention

23. In his third, fourth, fifth and sixth reports (E/CN.4/1997/32, paras. 26-37; E/CN.4/1998/39, paras. 23-24; E/CN.4/1999/60, paras. 28-34; E/CN.4/2000/61, paras 23-24), the Special Rapporteur referred to the importance of the work done by the Centre for

International Crime Prevention in overseeing the implementation of the Basic Principles on the Independence of the Judiciary. The Special Rapporteur regrets that he was unable to attend the ninth session of the Commission on Crime Prevention and Criminal Justice in April 2000. However, he continued to receive assistance from the secretariat as and when needed with regard to standards.

24. The Special Rapporteur has been informed that the tenth session of the Commission on Crime Prevention and Criminal Justice in May 2001 will consider the status of the implementation of the Basic Principles on the Independence of the Judiciary. The Special Rapporteur will continue to liaise with the United Nations Office for Drug Control and Crime Prevention (UNODCCP) with respect to this matter.

25. As stated in his fifth report (E/CN.4/2000/61, para. 24) the Special Rapporteur received an invitation from the Executive Director of UNODCCP to attend the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna in April 2000. The Special Rapporteur regrets that he was unable to attend.

3. Activities and Programmes Branch of the Office of the High Commissioner for Human Rights

26. As mentioned in his third, fourth, fifth and sixth reports (E/CN.4/1997/32, para. 31; E/CN.4/1998/39, para. 26; E/CN.4/1999/60, para. 35; E/CN.4/2000/61, para. 25), the Special Rapporteur is collaborating with the Activities and Programmes Branch of the Office of the High Commissioner for Human Rights to develop a training manual for judges and lawyers in the context of the United Nations Decade for Human Rights Education. The Special Rapporteur apologizes for having been unable to devote sufficient time to this project.

4. Promotional activities

27. As stated in his third, fourth, fifth and sixth reports, the Special Rapporteur considers the promotion of the importance of the independence of the judiciary and the legal profession and the respect of the rule of law in a democratic society, in the spirit of the Vienna Declaration and Programme of Action, to be an integral part of his mandate. In this regard, the Special Rapporteur continued to receive invitations to address legal forums, seminars and conferences. Owing to other commitments, the Special Rapporteur could not accept all the invitations. Nevertheless, he did accept the following invitations:

(a) From 15 to 16 April 2000 to attend and observe a workshop of the Judicial Group for the Strengthening of Judicial Integrity in Vienna. The workshop was organized within the framework of the Global Programme against Corruption and in conjunction with the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Ten Chief Justices from Asia and Africa or their representatives participated in the workshop;

(b) On 24 June 2000 to deliver the keynote address at the Conference on Human Rights Defenders in Dublin. The conference was organized by the Irish Council for Civil Liberties;

(c) From 6 to 8 October 2000 to participate and address the Amnesty International World Lawyers' meeting on the theme "Defending human rights" in Belfast, Northern Ireland;

(d) On 28 October 2000 to deliver the keynote address at a symposium on "Mandatory sentencing - rights and wrongs" organized by the University of New South Wales in Sydney, Australia;

(e) On 1 and 2 December 2000 to participate in an expert seminar on the implementation of the mandate of the Special Representative on human rights defenders, held in Cartigny, Geneva, organized by the International Service for Human Rights;

(f) From 26 to 28 January 2001 to participate in a meeting on the Princeton Project on Universal Jurisdiction, held at Princeton University. The meeting is sponsored by Princeton University, the Woodrow Wilson School of Public and International Affairs, the International Commission of Jurists, the Urban Morgan Institute for Human Rights of the University of Cincinnati and the Netherlands Institute for Human Rights.

(g) From 24 to 26 February 2001 to attend and observe the second workshop of the Judicial Group on Strengthening Judicial Integrity in Bangalore, India.

IV. THEORETICAL ISSUES

A. Judicial corruption

28. In his sixth report to the Commission on Human Rights (E/CN.4/2000/61, paras. 29-30) the Special Rapporteur drew attention to the growing concerns expressed over judicial corruption. The expressions of concern continued during the year and can be seen in the calls for greater judicial accountability in many countries. Calls for formal mechanisms to deal with complaints against judges are also growing. It is in this context the Special Rapporteur intends to focus greater attention on promoting judicial integrity and accountability which will strengthen judicial independence and public confidence in the judiciary.

29. The Special Rapporteur will continue to work closely with the organizations and institutions that are currently addressing this issue. The Special Rapporteur has discussed this issue with the High Commissioner who has acknowledged its importance and affirmed that the matter will be followed closely by her Office.

B. Human rights defenders

30. The Special Rapporteur welcomes Commission resolution 2000/61 in which the Commission requested the Secretary-General to appoint a Special Representative to report on the situation of human rights defenders in all parts of the world. The Special Rapporteur will work closely with the Special Representative in the defence of human rights defenders who are lawyers acting in the discharge of their professional duties.

V. STANDARDS

International Association of Prosecutors

31. In April 2000, the Special Rapporteur met the Executive Council of the International Association of Prosecutors in Vienna and had discussions on further cooperation with that Association in the implementation of the Association's Standards of Professional Responsibility and its Statement of the Essential Duties and Rights of Prosecutors.

32. The Special Rapporteur continues to refer in his interventions and reports to regional standards, particularly those of the Council of Europe and LAWASIA (E/CN.4/1996/37, paras. 86-91, E/CN.4/1997/32, para. 49, E/CN.4/1999/60, paras. 43-49, E/CN.4/2000/61, paras. 33-35).

VI. JUDICIAL DECISIONS REFLECTING THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY

33. The Special Rapporteur welcomes the judgement of the Supreme Court of Bangladesh on 2 December 1999 in the case of Government of Bangladesh and Others v. Md. Masdan Hossain and Others. (Supreme Court of Bangladesh, Appellate Division, Civil Appeal No. 79 of 1999.) In its judgement the Court ordered, inter alia, the separation of the subordinate judiciary from the executive so as to make the subordinate judiciary fully independent of the executive. In its lengthy judgement the Court analysed the essential elements of judicial independence and in doing so applied some of the leading judgements on the subject from appellate courts of other jurisdictions, particularly Canada. This judgement stands out as a landmark and should serve as a precedent for courts in other countries to follow, particularly those in the Commonwealth, in order to provide for an independent judiciary.

VII. SITUATIONS IN SPECIFIC COUNTRIES OR TERRITORIES

34. This chapter contains brief summaries of the urgent appeals and communications transmitted to governmental authorities between 30 November 1999 and 30 November 2000, as well as of replies to the allegations received between 24 December 1999 and 24 December 2000. In addition, the Special Rapporteur takes note in this chapter of the activities of other mechanisms which are related to his mandate. Where he has deemed it necessary, the Special Rapporteur has included his own observations. He wishes to emphasize that the appeals and communications reflected in this chapter are based exclusively upon information that has been transmitted to him directly. Where information was insufficient, the Special Rapporteur was not in a position to act. He also recognizes that problems concerning the independence and impartiality of the judiciary are not confined to the countries and territories mentioned in this chapter. In this regard, he wishes to emphasize that readers of the present report should not interpret the omission of a particular country or territory from this chapter as indicating that the Special Rapporteur considers that there are no problems with the judiciary in that country or territory.

35. In preparing this report, the Special Rapporteur has taken note of the reports submitted to the Commission by the country special rapporteurs/representatives and independent experts.

Algeria

Communication to the Government

36. On 25 January 2000, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture and the Special Rapporteur on violence against women concerning the case of Nadhéra Mesbah. Ms. Nesbah was arrested on 19 December 1999 after being accused of fraud by one of her clients and placed in detention. Ms. Nesbah was pregnant at the time and suffered from diabetes. Her request for release on medical grounds was refused on 18 January and the trial was delayed until 25 January 2000.

Communication from the Government

37. On 8 February 2000 the Government replied to the allegation concerning Nadhéra Mesbah. The Government stated that Ms. Mesbah had been arrested for corruption. It was alleged that Ms. Mesbah had informed a client that, for a payment of 6 million Algerian dinars, Ms. Mesbah could secure leniency from the judge hearing the case. A complaint was lodged with the police and Ms. Mesbah was arrested in possession of the money. On 20 December 1999, Ms. Mesbah, despite her pregnancy, was placed in detention. On 25 January 2000, she was sentenced to 18 months imprisonment and fined 20,000 Algerian dinars. Ms. Mesbah has appealed. Because of her ill-health she was placed under surveillance in the civil medical hospital in Blida. On 18 February the Government informed the Special Rapporteur that Ms. Mesbah was provisionally released after her appearance before the court at Bilda on 9 February 2000.

Observation

38. The Special Rapporteur thanks the Government for its response.

Argentina

Communication to the Government

39. On 31 October 2000, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary and arbitrary executions concerning lawyers Carlos Varela, Diego Lavado and Alejandro Acosta. The three lawyers have faced harassment since taking two cases in which police officers are accused of killing people in their custody. In June 2000, defamatory statements about the lawyers were circulated in the press. In August 2000, they received threatening phone calls and on 24 October 2000, their offices were broken into and files were stolen. An anonymous phone call later claimed that the Mendoza Investigations Police were responsible for the break-in.

Communication from the Government

40. On 21 December 2000, the Permanent Mission of Argentina to the United Nations Office at Geneva sent a note verbale to the Special Rapporteur regarding the case of Carlos Varela, Diego Lavado and Alejandro Acosta. The Government informed the Special Rapporteur that the police had opened an investigation into the break-in into the lawyers' offices. Further, security measures had been taken and until the cases were resolved the police would patrol the area at night and during weekends. It had also been suggested that a uniformed guard should be stationed outside the offices in order to provide better security.

Observation

41. The Special Rapporteur thanks the Government for its response.

Australia

Communication to the Government

42. On 14 November 2000, the Special Rapporteur sent a communication to the Government concerning alleged statements by the Chief Minister of the Northern Territory, Mr. Denis Burke. The Special Rapporteur had been informed that the Chief Minister had called for a Northern Territory magistrate to resign after he had stated from the bench that he agreed with a defence lawyer's criticism of mandatory sentencing laws in the context of the case being heard.

Communication from the Government

43. On 21 December 2000, the Government acknowledged receipt of the Special Rapporteur's communication.

Observation

44. The Special Rapporteur awaits a response from the Government.

Azerbaijan

Communications to the Government

45. On 25 February 2000, the Special Rapporteur sent a communication to the Government concerning the Azerbaijan Bar Association (ABA) which submitted an application for registration as an NGO on 18 June 1999 but was denied registration on 4 August 1999 and again on 19 November 1999. The reason given for the refusal was that the organization could not be registered until the draft Law on the Legal Profession had been passed.

46. On 25 February 2000, the Special Rapporteur sent a communication to the Government concerning a lawyer, Aslan Ismailov, who had been dismissed from the Bar Association on 18 March 1999, following a visit to the United States of America. It was alleged that Mr. Ismailov was dismissed because during his visit he directly contradicted statements by the Minister of Justice and the President's Legal Adviser, who were visiting the United States at the same time.

Communications from the Government

47. On 2 June 2000, the Government responded to the allegations regarding the ABA. The Government stated that the documents provided by the ABA in support of its application for registration were inconsistent with section I, articles 4 and 9, of the Law on Lawyers and their Activities which states that the activities of lawyers cannot be carried out by individuals who are not members of the Bar Association. As the founders of the ABA were not members of the Bar Association and did not exercise the functions of lawyers, they could not establish such an organization.

48. On 2 June 2000, the Government responded to the allegations regarding Mr. Ismailov. The Government stated that Mr. Ismailov while a member of the Bar Association had founded a private law firm and engaged in entrepreneurial activities. Mr. Ismailov repeatedly refused requests by the Presidium of the Bar Association to explain his activities. Following an investigation, the Presidium of the Bar Association on 18 March 1999 ordered Mr. Ismailov to cease those of his activities which were in violation of the regulations on the simultaneous pursuit of legal activities and entrepreneurial activities. Following his refusal, the Presidium of the Bar Association revoked Mr. Ismailov's membership. Mr. Ismailov appealed but the decision of the Presidium was upheld in all the higher courts.

49. On 16 October 2000, the Government sent a document detailing recent judicial and legal reforms.

Observation

50. The Special Rapporteur thanks the Government for its responses. He is unable to express a view as to whether there has been a breach of the Basic Principles on the Role of Lawyers.

Bahrain

Communication from the Government

51. On 7 February 2000, the Government sent a communication in response to an urgent appeal of the Special Rapporteur dated 6 July 1999 (E/CN.4/2000/61, paras. 46-49). The Government stated that Mr. Al-Jamri had been convicted by the High Court of Appeal on 7 July 2000 on various criminal charges and sentenced to 10 years' imprisonment. Mr. Al-Jamri was represented by four lawyers of his own choosing, the case was heard by three civilian judges, and the trial was conducted fairly. On 8 July 2000, after a public apology, Mr. Al-Jamri was pardoned by His Highness the Amir and released from custody.

Observation

52. The Special Rapporteur thanks the Government for its response. He has not heard further from the source who sent the original complaint.

Belarus

Communication to the Government

53. On 6 June 2000, the Special Rapporteur sent a communication to the Government concerning the recent burglaries of the offices of well-known human rights lawyers, including those of Ms. Vera Stremkovskaya and Mr. Oleg Volchek. On 29 May 2000, unknown persons broke into the office of the Human Rights Centre, of which Ms. Stremkovskaya is a director, and stole various items, including computers, documents and human rights literature. It was alleged that breaking into human rights organizations had become a common practice in Belarus. Mr. Volchek's organization, Legal Assistance to the Population, was also burgled in May 2000.

Communication from the Government

54. On 28 July 2000, the Government responded to the Special Rapporteur's communication. The Government stated that reports had been filed with the District Internal Affairs Departments and that investigations were being carried out. The investigations involved a full inspection of the scene of the crime, the interviewing of inhabitants of the buildings where the offices are situated, and attempts to trace the stolen goods. A number of individuals are being investigated for complicity but it is not yet established who committed the crimes. The investigations are being monitored by the State Procurator.

Observation

55. The Special Rapporteur thanks the Government for its response. While on mission in Belarus the Special Rapporteur expressed his concern about this matter to the Minister for Foreign Affairs.

Brazil

Communications to the Government

56. On 5 June 2000, the Special Rapporteur sent a communication to the Government concerning the situation of lawyer Valdenia Aparecida Paulino. The Special Rapporteur had received information stating that Ms. Aparecida Paulino had been the subject of threats in connection with her representation of the families of two people who had allegedly been killed by police officers. It was alleged that two military police officers had approached a witness in the case and told him to take a message to Ms. Aparecida Paulino warning her "to take care".

57. On 16 June 2000, the Special Rapporteur sent an urgent appeal to the Government concerning the situation of lawyer Henri Burin des Roziers. The name of Mr. Burin des Roziers had been included on a list of people "destined for death" which had been circulated publicly. This was allegedly in connection with his representation of the movement Peasants Without Land, five members of which had been executed recently.

58. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communications dated 26 April 1999 (E/CN.4/2000/61, para. 83), 30 August 1999 (E/CN.4/2000/61, para. 85) and 5 June 2000. The Special Rapporteur also requested an update on the situation of lawyer Joilce Gomes Santana.

Communications from the Government

59. On 19 June 2000, the Government replied to the allegations concerning Henri Burin des Roziers. The Government stated that on 21 May 2000, the Ministry of Justice requested the Director General of the Federal Police to present a report on violence related to the land conflict in the area under the jurisdiction of the 17th squad of the Military Police of Para State. Further, on 31 May 2000 the Minister of Justice appointed Percilio de Souza Lima and Maria Eliane Menezes de Farias, members of the Council for the Protection of the Rights of the Human Person, to follow the trial of Jeronimo Alves do Amorim. Mr. Burin des Roziers was legal counsel for the prosecution in that case. On 6 June 2000 the trial was held, Mr. Alves do Amorim was convicted and received a sentence of 19 years and 6 months.

60. On 23 June 2000, the Government replied to the communications of 30 August and 16 November 1999. The Government confirmed that lawyer Jolice Gomes Santana had received threats, and stated that the Ministry of Justice had offered to place her under the Federal Programme of Assistance to Victims and Threatened Victims. The Ministry of Justice also instructed the Federal Police to follow up her case.

Observations

61. The Special Rapporteur thanks the Government for its responses. In the case of Henri Burin des Roziers, the Government has not responded to the allegation concerning the threat to the lawyer.

Burundi

62. The Special Rapporteur has taken note of the report to the General Assembly of the Special Rapporteur of the Commission of Human Rights on the situation of human rights in Burundi (A/55/358). The report stated (paras. 75-82) that there is a serious problem with the slowness of the administration of justice and there was a rising incidence of corruption amongst judicial officials. In order temporarily to remedy this situation, the Ministry of Justice had sought to strengthen the Prosecutor's Office at the Court of Appeals by assigning teams of judges to speed up the investigation of cases. However, the report also noted that the ethnic imbalance in the judiciary and the bar still exists, although the proposed creation of a Higher School of the Magistrature would be a step towards alleviating this problem.

Observation

63. The Special Rapporteur will continue to liaise with the Special Rapporteur on the situation of human rights in Burundi.

Cameroon

Communication from the Government

64. On 22 August 2000, the Government replied to a joint urgent appeal dated 26 October 1999, regarding the trial of Mr. Edwin Jumbien, Mr. Hassan Jumban and Mr. Simon Ngekqwei (E/CN.4/2000/61, paras. 93-97). The Government stated that the individuals concerned were tried by a military tribunal in connection with armed attacks in Bamenda in 1997, in accordance with Cameroonian positive law which states that crimes committed with the use of a firearm are in the first instance a matter for military tribunals, irrespective of the status of the individual. On 5 October 1999 they were sentenced to life imprisonment by the military tribunal in Yaoundé. The Government also stated that the individuals were assisted by a number of lawyers of their own choosing.

Observations

65. The Special Rapporteur thanks the Government for its response. He expresses concern over the law which permits trials of civilians by military courts.

Chile

Communication to the Government

66. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communication dated 21 May 1999 (E/CN.4/2000/61, para. 99).

Observation

67. The Special Rapporteur awaits the Government's response.

China

Communication to the Government

68. On 3 February 2000, the Special Rapporteur sent a communication to the Government requesting a copy of a directive issued by the President of the People's Supreme Court to all judges of provincial and military courts to curb nepotism and corruption amongst judges.

Communications from the Government

69. On 22 March 2000, the Government responded to the Special Rapporteur's communication of 19 November 1999 (E/CN.4/2000/61, paras. 103-104) concerning the Falun Gong. The Government stated that in cases against the Falun Gong tried in Beijing, the individuals concerned were represented by lawyers of their choosing, who conducted the defence independently. The request by the Beijing Bureau of Justice for figures from legal offices on requests for consultations related to Falun Gong was of no special significance and was a matter of normal professional guidance and administrative routine related to work statistics.

70. On 16 May 2000 the Government sent a copy of the Provisional Rules for the Conduct of Unlawful Trials by Judicial Personnel of the People's Courts, in response to the Special Rapporteur's communication of 3 February 2000.

Observations

71. The Special Rapporteur thanks the Government for its responses. The notice issued by the Beijing Bureau of Justice on 29 July 1999 in connection with the Falun Gong cases could be seen to be in breach of principle 16 of the Basic Principles on the Role of Lawyers as constituting an improper interference with the performance of the functions of lawyers.

72. The Special Rapporteur welcomes the directive of the President of the People's Supreme Court to curb judicial corruption and improprieties.

Colombia

Communications to the Government

73. On 23 May 2000, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary and arbitrary executions regarding lawyer Alirio Uribe Múñoz. It was alleged that the name Mr. Uribe Múñoz, a member of the José Alvear Restrepo Lawyers Collective, had appeared on a paramilitary death list that was circulated on 5 May 2000, on a leaflet alleging an imminent paramilitary offensive in Bogota. Mr. Uribe Múñoz, had reportedly been described as a guerrilla collaborator in a Colombian army intelligence report.

74. On 16 June 2000, the Special Rapporteur sent a communication to the Government concerning the investigations into the death of Nydia Erika Bautista, after she was abducted by soldiers in 1987. A Constitutional Court decision in 1997 had ruled that cases of human rights violations should be excluded from military courts, in accordance with United Nations recommendations. It was alleged that a decision of a military court had ordered the exhumation of the remains of Ms. Bautista. The family of Ms. Bautista filed a petition with a civil judge requesting suspension of that order on the basis of concerns about the independence and impartiality of the military tribunal. A petition had also been lodged with the Constitutional Court requesting the case to be transferred to the ordinary court system.

75. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communication dated 18 May 1999 (E/CN.4/2000/61, para. 118).

Communications from the Government

76. On 29 May 2000, the Government responded to the Special Rapporteur's urgent appeal concerning Alirio Uribe Múñoz. The Government stated that the National Police had made arrangements to protect Mr. Uribe Múñoz's life after learning of a report being submitted on the matter to the Inter-American Commission on Human Rights. A security study was conducted in coordination with the Bogota Metropolitan Police and the Ministry of the Interior was contacted so the case could be studied by the Ministry's Regulations and Risk Evaluation Committee. The Government stated it would inform the Special Rapporteur about the outcome of the investigations.

77. On 19 July 2000, the Government responded to the Special Rapporteur's communication regarding the investigations into the death of Nydia Erika Bautista. The Government stated that on 18 February 2000 the Military High Court confirmed the court order refusing the transferral of the case to the ordinary courts. At the request of the claimant, the Military Court of Investigation was given responsibility for conducting DNA tests.

78. With respect to the petition to the Constitutional Court, the Government stated that the Constitutional Court had issued its decision on 29 June 2000. The Court overruled the decision of the Criminal Division of the Supreme Court of Justice and annulled a court order dated 14 November 1996 by the Disciplinary Division of the Supreme Council of the Judiciary. The latter decision resolved the conflict of jurisdiction between the Office of the Public Prosecutor and the 20th National Army Brigade in favour of the military. The Constitutional Court ordered the Disciplinary Division of the Supreme Council of the Judiciary to issue a new order.

79. The Government also stated that it considered it to be inappropriate to make sweeping judgements about the unsuitability of the military criminal justice system, and that the effectiveness of trials taking place before military criminal courts should be judged on a case-by-case basis. Also, the military criminal courts had transferred to the ordinary court system a total of 529 cases in the last three years, some of which had concerned human rights violations.

80. On 4 August 2000, the Government supplied supplementary information concerning Nydia Erika Bautista. The Disciplinary Chamber of the Supreme Council of the Judiciary ruled on 21 July 2000, that the ordinary criminal courts had jurisdiction in this case.

81. On 21 December the Government replied to the Special Rapporteur's communication of 26 October 2000 regarding proposed legislation which would provide for the continuation of the use of faceless judges and prosecutors and secret witnesses in terrorism, torture, drug trafficking and illicit enrichment-related criminal trials, and which would provide for detention without trial. Law No. 504 of 25 June 1999, in force as of 1 July 1999, developed the

constitutional principles of fair trial and independence of the judiciary. This law limited the use of faceless judges and prosecutors and secret witnesses to very specific cases. However, by judgement C 392/2000, the Constitutional Court declared these provisions unconstitutional.

82. The Government also sent the following documents during the year on human rights in Colombia; Public Force and Human Rights in Colombia on 11 April 2000; Policy on Human Rights and International Humanitarian Law Progress Report on 24 July 2000; and Colombia Human Rights Observatory on 22 August 2000 and 17 October 2000.

Observations

83. The Special Rapporteur thanks the Government for its responses. He is waiting to hear the outcome of the investigations into the Alirio Uribe Múñoz case. Conflict between the respective jurisdictions of the military courts and ordinary courts have been a problem which the Special Rapporteur addressed in his mission report.

84. The Special Rapporteur welcomes the judgement of the Constitutional Court declaring the use of faceless judges and prosecutors and secret witnesses in terrorism, torture, drug trafficking and illicit enrichment-related criminal trials, unconstitutional.

Democratic Republic of the Congo

Communications to the Government

85. On 10 May 2000, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, the Special Rapporteur on torture and the Special Rapporteur on the promotion and protection of the freedom of opinion and expression regarding the situation of Freddy Loseke Lisunbu La Yayenga. Mr. Loseke Lisunbu, editor of La Libre Afrique, was detained on 31 December 1999 and taken to Kokolo military camp where, it was alleged, he was subjected to torture. On 3 May 2000 he was brought before a military court and accused of spreading false information and insulting the army, charges that can carry a sentence of 10 years' imprisonment.

86. On 16 November 2000, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo regarding the trial of four journalists by a military court (Cour d'ordre militaire). Emile-Aimé Kakese was arrested after publishing articles that allegedly called upon the opposition to rebel against the Government. Jean-Pierre Ekanga Mukana and Richard Nsamba Olongi were arrested after they arrived in court to testify on Emile-Aimé Kakese's behalf. The lawyer representing Emile-Aimé Kakese was also jailed for complicity. The Special Rapporteurs expressed their grave concern over the continuing practice in the country, of trying civilians in military courts.

Observation

87. The Special Rapporteur expresses concern over the continued failure of the Government to respond to his communications.

Egypt

Communication to the Government

88. On 8 May 2000, the Special Rapporteur sent a follow-up letter regarding the situation of the Egyptian Bar Association (E/CN.4/2000/61/paras. 143-147). The Special Rapporteur expressed his concern that elections still had not been held for the Administrative Council of the Bar despite a ruling by the Court of Appeal on 13 July 1999 ordering that those elections take place.

Communications from the Government

89. On 12 October 2000, the Government sent a communication regarding a decision of the Egyptian Constitutional Court of June 2000. The Court found Law No. 153 of 1999, concerning non-governmental organizations, to be invalid on procedural grounds. The decision affirmed an individual's right to form an association as being an indivisible part of his/her personal freedom.

90. On 19 October 2000, the Government sent a communication regarding a decision of the Egyptian Constitutional Court of 8 July 2000 concerning the constitutionality of article 24 of Law No. 73 (1956), which allowed the appointment of persons who were not members of judicial bodies to bodies monitoring elections. The court held that the provision breached articles 3, 62, 64 and 88 of the Egyptian Constitution as it distanced the polling process from judicial supervision, and thereby removed a fundamental safeguard concerning the right to vote. The aim of judicial supervision is to "strengthen democracy and ensure that the right to vote is exercised fully and in a proper and irreproachable manner in keeping with its designated purpose which is to express the sovereignty of the people".

91. In its communication of 19 October 2000, the Government also informed the Special Rapporteur that the elections for the Administrative Council of the Egyptian Bar Association would be held after the legislative elections in October 2000.

Observations

92. The Special Rapporteur expresses concern over the delay in holding the elections for the Administrative Council of the Bar Association. The Court ruling was issued on 13 July 1999 and there appeared to be no justification for delaying the elections until after legislative elections in October 2000. The Government will be seen to be in breach of principle 24 of the Basic Principles on the Role of Lawyers.

Gambia

Communication from the Government

93. On 16 February 2000, the Government responded to the Special Rapporteur's communication of 16 November 2000 regarding Justice Robbin-Coker (see E/CN.4/2000/61, paras. 150-151). The Government stated that the letter terminating the contractual appointment of Justice Robbin-Coker was, in accordance with the law, delivered to his office and received

and signed for by his secretary on the day it was issued. Further, the Government stated that it had at no time questioned Justice Robbin-Coker with respect to any of his judicial decisions, and has complied with the orders made in the cases of the GAMTEL employees.

94. As Justice Robbin-Coker was not a citizen of the Gambia he could not be employed on a permanent basis. His letter of appointment contained some of the governing terms and conditions which included the following: "the appointment is terminable either by the Government or by yourself giving three month's notice in writing or on the payment of three month's salary in lieu of notice". By virtue of the mutual agreement to this provision, article 141 of the Constitution cannot be applied in his case. The Government also stated that there were serious allegations of corruption on the part of Justice Robbin-Coker which were adequately substantiated to the authorities. These can be supplied if required.

Observation

95. The Special Rapporteur thanks the Government for its response. He notes that judges appointed on contracts generally have no security of tenure; such judges cannot therefore be perceived to be independent.

Guatemala

Communications to the Government

96. On 22 February 2000, the Special Rapporteur sent a communication to the Government concerning the situation of lawyers Arturo Recinos, Mario A. Menchú Francisco, Luis A. Vásquez Menéndez, Luis R. Romero Rivera and Carlos N. Palencia Salazar. These lawyers had allegedly been receiving telephone death threats and threatening calls in connection with the defence of members of a kidnapping gang. The lawyers were forced to withdraw from the case for fear of their lives.

97. On 1 May 2000, the Special Rapporteur sent a communication concerning the case of a former Justice of the Peace in Santa Lucía de Utatlán, Ricardo Efraín Mogollón Mendoza. Mr. Mogollón was allegedly removed without due process by the Supreme Court in July 1998. After the Special Rapporteur conducted a mission to Guatemala in 1999, he recommended that the Supreme Court should review this case, if legally possible. Mr. Mogollón filed a request for review of his case with the Supreme Court, which was dismissed. The Special Rapporteur has been informed that a petition concerning the dismissal of Ricardo Efraín Mogollón Mendoza has been filed with the Inter-American Commission on Human Rights.

98. On 2 August 2000, the Special Rapporteur sent a communication concerning a government prosecutor, Maura Estrada Mansilla de Pérez. It was alleged that the prosecutor concerned had repeatedly failed to attend court hearings in a case involving the sexual assault of a 15-year-old street girl by a member of the Special Forces of the National Civil Police. The information received also stated that the Guatemalan Human Rights Ombudsman, José Arango Escobar, concluded that the human rights of the girl had been violated by the accused and that the prosecutor was negligent in the performance of her duties.

99. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to his communications dated 22 February, 1 May and 2 August 2000.

Communication from the Government

100. On 21 July 2000, the Government sent the Special Rapporteur a copy of Government Resolution No. 310-2000. This decree amended the composition of the National Commission for Monitoring and Supporting the Strengthening of Justice, ensuring a diversity of judicial, executive and civil society representation. The decree also set out the principal objective of the Commission as being to draw up and transmit such proposals and recommendations as it may consider timely and appropriate for the comprehensive improvement of the system of justice in Guatemala and to monitor the implementation of the recommendations made in the report of the Commission on the Strengthening of Justice, together with those made by the Special Rapporteur on the independence of judges and lawyers.

Observations

101. The Special Rapporteur is awaiting the Government's response to his previous communications.

102. The Special Rapporteur welcomes the Government's commitment to implementing the recommendations outlined in the report on his mission to Guatemala (E/CN.4/2000/61/Add.1, para. 169).

Indonesia

103. On the invitation of the Attorney-General of Indonesia, the Special Rapporteur attended the South Jakarta District Court on 31 August 2000 to observe the opening of the trial of H.M. Soeharto, the former President of Indonesia. Mr. Soeharto was being tried on charges of corruption during his chairmanship of several charitable foundations while in office as President of the Republic of Indonesia.

104. The Special Rapporteur's interest in the trial stems from the principle that leaders of Governments should not enjoy any form of impunity from investigation and prosecution for crimes alleged to have been committed by them while in office. When prosecuted they should be tried before an independent and impartial tribunal applying the standards for a fair trial recognized under international law.

105. On 31 August 2000, at the commencement of the trial, Mr. Soeharto failed to appear. The court, composed of five judges, heard arguments from the counsel for Mr. Soeharto informing them that Mr. Soeharto was medically unfit to appear in court and to go through the process of the trial. To that extent the court had before it three medical reports including one of an examination conducted on Mr. Soeharto at 6 a.m. on 31 August 2000. No fewer than 31 doctors had examined Mr. Soeharto.

106. In response to the contention of the defence counsel, the prosecutor called for a second independent medical examination of Mr. Soeharto. The court, after hearing further arguments, adjourned the hearing to 14 September 2000 to hear oral medical evidence on Mr. Soeharto's fitness to appear and stand trial.

107. The Special Rapporteur met the defence counsel and the public prosecutor involved in the trial and had discussions with them. The Special Rapporteur was supplied with the medical reports by the defence counsel. In the afternoon on 31 August 2000, the Special Rapporteur met Mr. Soeharto at his residence in the presence of his doctors and lawyers.

108. The following day the Special Rapporteur met President Abdurrahman at his residence. During this meeting the Minister for Foreign Affairs and the Attorney-General were present.

109. Among the minimum guarantees of a fair trial, as provided in article 14 (1) of the International Covenant on Civil and Political Rights are:

(a) The accused has the right to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) The accused has the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;

(c) The accused has the right to examine, or to have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

110. It therefore follows that what is fundamental to a fair trial, in addition to an independent and impartial tribunal, is that the accused should be mentally capable of following the trial proceedings, able to instruct his lawyers and to be able to give coherent evidence.

111. The medical reports presented to the court, while setting out the medical history and medical condition of Mr. Soeharto, who was then 79 years old, gave no indication in clear terms that Mr. Soeharto was either physically or mentally unfit to stand trial. It was this gap in the medical reports which may have led the court to adjourn the proceedings to enable it to examine the doctors orally.

112. The Special Rapporteur, in a short report to both the Attorney-General and defence counsel, drew their attention to the case of former Chilean President Augusto Pinochet and how the Secretary of State for Home Affairs of the Government of the United Kingdom of Great Britain and Northern Ireland dealt with Mr. Pinochet's lawyers' contention that he was not medically fit to stand trial. The Special Rapporteur advised that the procedure adopted by the Secretary of State in obtaining an independent medical opinion could be followed in the case of Mr. Soeharto by the South Jakarta District Court.

113. On 14 September 2000, the Special Rapporteur attended court for the adjourned hearing. The court, after hearing oral evidence, decided to call for an independent medical examination of Mr. Soeharto, to determine whether he was medically unfit to stand trial. The prosecutor appealed that decision.

Communication to the Government

114. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communications dated 1 March 1999 and 20 July 1999 (E/CN.4/2000/61, paras. 160-162).

Iran (Islamic Republic of)

Communications to the Government

115. On 19 October 2000, the Special Rapporteur sent a joint communication with the Special Representative on the situation of human rights in the Islamic Republic of Iran regarding the trial of Ms. Shirin Ebadi and Dr. Mohsen Rahami. Bench 16 of the Tehran Public Court, on 29 September 2000, convicted Ms. Ebadi and Dr. Rahami of defamation and disseminating false information and sentenced them to a suspended period of imprisonment of 15 months. They were also suspended from legal practice for five years. It was alleged that only the Disciplinary Court of the Lawyers Association, in accordance with article 17 of the Law on the Independence of the Lawyers Association, was able to suspend a lawyer from practice.

116. The Special Rapporteurs also voiced their concern over statements attributed to Mullah Hadi Marvi, First Deputy to the Judiciary Chief Mahmoud Hashemi Shahroudi, stating that "judges must obey the Supreme Leader and have no independence in judgement".

117. The Special Rapporteur has also taken note of the report of the Special Representative on the situation of human rights in the Islamic Republic of Iran (A/55/363, paras. 32-46, 106). The report noted that although reform of the judicial system had been stated as an important objective, little progress had been made in that direction. Also, the various components of the right to a fair trial seem to be ignored by the judiciary. The Special Representative also expressed regret over the seeming inaction by the Independent Bar Association in the face of acts of intimidation of lawyers, or with respect to the conduct of the courts and the right to a fair trial.

Observation

118. The Special Rapporteur is waiting for a response from the Government.

Israel

Communications to the Government

119. On 4 February 2000, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture regarding Yussuf Mohammed Jum'a Kanan, who was reportedly arrested on 18 January 2000 because he was working in a restaurant without a legal work permit.

Since that time he has been detained at the General Security Service Interrogation Unit of the Shikma Detention Centre in Ashkelon. On 20 January 2000, it was alleged that he was denied access to a lawyer and further that an order prohibiting access to counsel has been imposed.

120. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communications dated 13 January 1999 and 4 February 2000 (E/CN.4/2000/61, paras. 167-168).

Observation

121. The Special Rapporteur is waiting for a response from the Government.

Jamaica

Communication to the Government

122. On 5 September 2000, the Special Rapporteur sent an urgent appeal concerning the harassment of a lawyer, Dahlia Allen. Ms. Allen is representing 20 inmates of St. Catherine Adult Correctional Centre, in a commission of inquiry into their alleged mistreatment by prison guards. The information received stated that Ms. Allen has been subjected to surveillance and her telephone line tapped. Also it was alleged that threats had been made that claim that State Security officers associated with St. Catherine's prison are colluding with inmates to have Ms. Allen killed.

Observation

123. The Special Rapporteur is waiting for a response from the Government.

Kenya

Communication to the Government

124. On 21 September 2000, the Special Rapporteur sent a communication regarding threats made against the International Federation of Women Lawyers. The information received stated that on 29 August 2000, five police officers had tried to force their way into the association's office. Also, three staff members had received anonymous threats that they would be killed because of their work. It was alleged that the harassment was particularly linked to their provision of legal assistance to an alleged rape victim in bringing a case against a minister in the Office of the President.

Communications from the Government

125. On 18 February 2000, the Government replied to the Special Rapporteur's communication of 5 November 1999 concerning the trial of Tony Gachoka (see E/CN.4/2000/61, paras. 187-188). The Government denied that Mr. Gachoka's trial was unfair and stated that the court exercised its jurisdiction independently, without any interference from the executive or any other quarter.

126. On 26 October 2000, the Government replied to the Special Rapporteur's communication of 21 September 2000. The Government categorically denied being involved in any alleged intimidation. The incidents had been reported to the police and the matter was being investigated. The Government further stated that if any police officers are found to be involved, then they were acting in their personal capacities and will be prosecuted.

Observation

127. The Special Rapporteur thanks the Government for its responses. He is waiting to hear the outcome of the investigations in the case of the International Federation of Women Lawyers.

Kyrgyzstan

Communications to the Government

128. On 28 April 2000, the Special Rapporteur sent a communication concerning the situation of Ms. Nadejda Nikolaevna Maslovets. Ms. Maslovets is the only witness to a murder allegedly involving members of the Lenin District Internal Affairs Administration. Since the beginning of the trial of these persons she has been threatened with physical injury, offered bribes, and a car with black windows and no registration number has frequently been outside her house with two or three men inside. On 11 March 2000, she was attacked by the three men. She has reported these incidents to the prosecution department, but as at the date of the communication no action had been taken.

129. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communication dated 28 April 2000.

130. The Special Rapporteur has received information on developments in this case from the Special Rapporteur on torture. The Office of the Public Prosecutor carried out an investigation into the threats, but it proved impossible to determine who was responsible. Ms. Maslovets was unable to identify anyone among staff members of the Lenin District Internal Affairs Administration as being her attacker. Ms. Maslovets also stated that she hadn't received any threats since 11 March 2000.

Observation

131. The Special Rapporteur has not heard anything further on this matter.

Lebanon

Communications to the Government

132. On 9 May 2000, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the freedom of opinion and expression concerning lawyer Muhamad Mugraby. On 5 May 2000, it was reported in a local newspaper

that the Prosecutor-General might prosecute Mr. Mugraby for defamation for his statements concerning corruption in the judiciary. It was also alleged that Mr. Mugraby might be subject to preventive detention. The Press Court, where Mr. Mugraby would be tried, does not have the power to order such arrests and furthermore under the code on the legal profession it is illegal to prosecute a lawyer before seeking authority from the Council of the Bar.

133. On 27 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communications dated 25 June 1999 (E/CN.4/2000/61, para. 191) and 9 May 2000.

Communication from the Government

134. On 2 November 2000, the Government responded to the Special Rapporteur's communication of 27 October 2000. With respect to the communication dated 9 May 2000, the Government stated the Council of the Bar in Beirut had decided on 19 May 2000 that the actions of Mr. Mugraby did not emanate from the exercise of the functions of an advocate nor were they situated in that context. The case remains pending against Mr. Mugraby. With respect to the communication dated 25 June 1999, the Government stated that the persons responsible for the assassination of the judges had not been identified yet, but the investigations were continuing and the Government would inform the Special Rapporteur of any developments.

Observation

135. The Special Rapporteur will continue to monitor the two cases.

Malaysia

136. Former Deputy Prime Minister Anwar Ibrahim continues to be held in custody serving a total term of 15 years' imprisonment. His appeal on conviction and sentence in the first trial, when he was sentenced to six years' imprisonment on conviction of charges of corruption (not monetary, but for interfering with police investigations) is pending before the Federal Court after its dismissal by the Court of Appeal.

137. The appeal on his conviction and sentence of nine years' imprisonment on sodomy charges is pending before the Court of Appeal. On both cases he was refused bail, pending appeal.

138. Serious allegations regarding the unfairness of both trials have been made by his counsel and those who have observed or followed the trial both within and outside Malaysia.

139. In another related case lawyer Zainur Zakaria, a former President of the Malaysian Bar and one of Anwar Ibrahim's defence lawyers, was charged with contempt and sentenced to three months' imprisonment. His offence was that he filed an application on behalf of Anwar Ibrahim

to urge the court to disqualify two of the prosecutors. Zainur Zakaria was released on bail and his appeal to the Court of Appeal was dismissed. He has now appealed to the Federal Court. The appeal will be heard on 29 January 2001.

140. In yet another related case, on 4 January 2000, lawyer Karpal Singh, the lead lawyer in the second trial of Anwar Ibrahim, was charged with sedition for words he spoke in court on 10 September 1999 in the course of defending his client. His trial is now fixed for hearing on 18 May 2001. The Special Rapporteur sent a communication to the Government on this matter on 14 January 2000. The Government replied on 10 April 2000 stating that it could not substantively reply to the Special Rapporteur's concerns as the matter was before the courts and any comment would be pre-empting the decision of the court.

141. In another earlier case, lawyer Tommy Thomas, a former Secretary of the Bar Council, was charged with contempt of court over a press statement he made in connection with a settlement agreement earlier recorded in the same court. The day after the press statement was published he retracted the statement publicly, before he was cited for contempt. He was sentenced to six months' imprisonment. He was released on bail. His appeal was heard by the Court of Appeal and judgement has not been delivered.

142. In yet another development, the High Court granted an injunction at the behest of a lawyer to restrain the Malaysian Bar Council, the executive body of the 9,000-member Malaysian Bar, from convening an Extraordinary General Meeting to discuss improprieties in the Malaysian judiciary. The court held that the conduct of judges and the judiciary cannot be discussed save in parliament. The appeal from this judgement was dismissed by the Court of Appeal. Leave to appeal against that decision was refused by the Federal Court on 29 November 2000. Therefore, in Malaysia today the conduct of judges cannot be discussed by anyone, not even the legal profession, in a closed-door meeting, except in parliament.

143. These judgements on the conduct of judges were delivered at a time of controversy regarding allegations of misconduct by the Chief Justice of Malaysia, Tun Eusoff Chin, who retired from the bench on 19 December 2000. It was alleged that he had travelled to New Zealand on holiday with a lawyer in 1995 and subsequently sat on appeals where the particular lawyer appeared and obtained favourable judgements. The Chief Justice's public statement that he merely met the lawyer and his family by chance in New Zealand was refuted when private investigation reports showed that he and the lawyer, and their respective families, had travelled together and returned together.

Defamation suits against the Special Rapporteur

144. In his last report to the Commission on Human Rights (E/CN.4/2000/61, paras. 195-205), the Special Rapporteur drew the Commission's attention to the fact that the Malaysian High Court had dismissed his application to strike down one of the four defamation suits pending against him, despite the advisory opinion of the International Court of Justice (ICJ).

145. The Special Rapporteur appealed from the decision of the Registrar of the High Court to a judge of the High Court. The judge heard the appeal and delivered judgement on 7 July 2000. In his judgement the judge agreed that the Court was bound by the advisory opinion of the ICJ and therefore struck down the suit. However, with regard to costs the judge ordered that "each party ought to bear its own costs" and gave the following grounds for the order:

(a) That the Special Rapporteur made damaging and disparaging statements about the plaintiffs, their lawyer and the judiciary in most unpalatable terms;

(b) That the Special Rapporteur breached the basic law of failing to give the right to be heard to the plaintiffs or their lawyer or the judiciary;

(c) That the Special Rapporteur was incapable of holding an independent view on matters concerning the judiciary and lawyers in Malaysia and had shown total disregard for the word "impartial";

(d) That the Commission on Human Rights should have chosen a non-citizen to comment on the independence of the country's judges and lawyers;

(e) That the Special Rapporteur neither talked nor wrote to the plaintiffs or to the judiciary to seek their views.

146. The judge came to these conclusions without hearing any arguments from the counsel on costs. Further, he went into the merits of the case, which were not at issue before the court, and there was no evidence whatsoever before him for him to be able to make such a finding. These findings and the terms in which they were expressed clearly indicated that the judge was prejudiced, for reasons best known to himself.

147. In a press release from Geneva, the Centre for the Independence of Judges and Lawyers described that part of the judgement as "more partisan than judicial".

148. The Secretary-General of the United Nations, in a letter dated 24 July 2000 to the President of the Economic and Social Council, described those findings as "grounds that the United Nations finds unacceptable".

149. After consultations with legal counsel, the Special Rapporteur decided not to appeal that part of the judgement.

150. Three more suits are still pending before the courts and have not been disposed of.

151. Four international legal associations, namely the International Bar Association, the International Commission of Jurists, the Commonwealth Lawyers' Association and the Union internationale des advocats, after a joint mission to Malaysia in April 1999 issued a joint report called "Justice in Jeopardy: Malaysia 2000". The mission concluded that the concerns expressed regarding the independence of the judiciary over the last 13 years were well founded.

152. A positive development was the appointment of the new Chief Justice, Tan Sri Mohamad Dzaiddin Abdullah, a former Vice-President of the Malaysian Bar and judge of the Federal Court, which was enthusiastically welcomed by all, including the Malaysian Bar and the media. The new Chief Justice has pledged to restore public confidence in the judiciary and has taken certain measures to that end.

153. On 1 January 2001 a new Attorney-General was also appointed. Dato' Ainum Mohd Saaid is the first woman in Malaysia to be appointed to this high office. Her appointment was welcomed by all quarters.

Mexico

Communications to the Government

154. On 9 May 2000, the Special Rapporteur sent a communication to the Government concerning the situation of lawyer Juan de Dios Hernández Monge. Mr. Hernández represents a group of students from the National Autonomous University of Mexico who are currently in detention. On 3 May 2000, he was attacked by a man whilst in his car at a set of traffic lights. The man asked whether he was the lawyer for the above-mentioned students, then insulted him and cut his forehead. Previously, on 2 January 2000, Mr. Hernández was beaten by unknown men in the parking lot of the National Autonomous University. It was alleged that despite the incident having been reported to the police, no investigation has taken place.

155. On 5 June 2000, the Special Rapporteur sent a communication concerning lawyers Leonel Guadalupe Rivero Rodríguez, Maurilio Santiago Reyes and María del Pilar Marroquín. On 29 March 2000, Mr. Rivero Rodríguez's house was burgled in an apparent attempt to steal files relating to his defence of students of the National Autonomous University of Mexico. On 12 May 2000, several rocks were thrown through the windows of his house. On 9 May 2000, Mr. Santiago Reyes and Ms. Marroquín were subjected to acts of intimidation: a van without number plates drove repeatedly past Mr. Santiago Reyes' house and that night they received several phone calls threatening to "go for your head".

156. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communication dated 5 June 2000.

Communications from the Government

157. On 26 May 2000, the Government supplied additional information concerning Digna Ochoa y Plácido and the Miguel Agustín Pro-Juarez Human Rights Centre. The Government stated that the Office of the Procurator-General of the Federal District was conducting an investigation into the alleged threats to the Centre. On 5 November 1999, the Centre was placed under special surveillance by the Judicial Police of the Federal District and an offer was made to Ms. Ochoa to provide for her personal safety, which she accepted on 18 November 1999. She is currently being protected by three female Judicial Police officers. On 4 November 1999, an order was made to the Judicial Police to provide 24-hour protection to the Centre.

158. On 16 July 2000, the Government sent a response to the communication concerning Juan de Dios Hernández Monge. The Government stated that the Office of the Attorney-General for the Federal District had initiated an inquiry jointly with the branch office of the public prosecutors office in Coyocán. On 1 March 2000, a proposal was made not to initiate criminal proceedings, as the complainant had not appeared despite having been summoned. Further, the National Human Rights Commission received a letter of complaint on 6 January 2000, but considered that the factual elements, which did not suggest that any federal authority was involved, did not permit it to intervene in this case. It was therefore the responsibility of the public prosecutor to investigate the matter.

159. On 1 November 2000, the Government sent a response to the communication concerning Leonel Guadalupe Rivero Rodríguez and Maurilio Santiago Reyes and Milar del Pilar Marroquín. The Government stated that the Office of the State Procurator-General had initiated a preliminary investigation which was currently being completed. Also, the Oaxaca Procurator-General reported that the lawyers concerned stated, on 10 July 2000, that they did not wish to be seen by the psychology expert from the Procurator's Office, which is a requirement for the completion of a preliminary investigation concerning the offence of threatening behaviour. They also stated that they did not wish to provide additional information for the investigation.

Observation

160. The Special Rapporteur thanks the Government for its responses.

Myanmar

161. The Special Rapporteur has taken note of the report of the Special Rapporteur on the Commission of Human Rights on the situation of human rights in Myanmar (A/55/359, paras. 27-29). The report stated that "the administration of justice is greatly marked by legal and factual constraints that are inconsistent with judicial independence. Not only are the courts not independent but they are also powerless in protecting the rights of victims in violations of their basic rights". The report also noted that there was a lack of information on whether the system of the administration of justice had changed or as to whether repressive laws from the former colonial regime were no longer being applied in a manner that violated fundamental human rights.

Observation

162. The Special Rapporteur will continue to monitor the situation.

Nepal

Communication to the Government

163. On 3 October 2000, the Special Rapporteur sent a communication concerning certain police activities that undermine the independence of the judiciary. The allegation stated that in

several cases the police had ignored judicial decisions requiring the release of prisoners illegally held in custody. In one case concerning Mr. Tara Bhusal, the police entered the court building to rearrest Mr. Bhusal several hours after a court decision had ordered him to be released from custody. In another case, Mr. Nar Bahadur Ale has been rearrested eight times in defiance of court orders releasing him from detention.

Communication from the Government

164. On 9 October 2000, the Government acknowledged receipt of the Special Rapporteur's communication of 3 October 2000. The Government further stated Mr. Tara Prasad Bhusal is not under police detention, and is currently in his village.

Observation

165. The Special Rapporteur is waiting for a response from the Government.

Pakistan

Communications to the Government

166. On 14 March 2000, the Special Rapporteur sent a communication concerning lawyer Iqbal Raad. On 10 March 2000, four gunmen killed Mr. Raad, a defence lawyer of former Prime Minister Nawaz Sharif, and three others in Mr. Raad's Karachi office. As a result Mr. Sharif's other defence lawyers have decided not to appear in court because of concern that an attempt would be made on their lives.

167. On 28 April 2000, the Special Rapporteur sent a communication concerning the situation of Judge Malik Qayyum. It was alleged that the military regime is considering promoting Judge Qayyum to the position of Chief Justice of the Lahore High Court, despite his lack of appropriate qualifications.

168. On 28 April 2000, the Special Rapporteur sent a communication concerning the situation of Dr. Farooq Sattar, a former Mayor of Karachi. On 26 November 2000, Dr. Sattar was arrested and taken to a military base in Karachi. On 7 February 2000 he was brought before the Public Accountability Court in Karachi, but not informed of the charges against him and on 23 February 2000, Dr. Sattar was transferred to Attock Fort. It is alleged that at Attock Fort there is no lawyer-client confidentiality as all conversations between lawyers and their clients are recorded.

169. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communications dated 22 February 1999 (E/CN.4/2000/61, para. 219), 21 May 1999 (E/CN.4/2000/61, para. 221), 14 March 2000, and two communications dated 28 April 2000.

Observations

170. The Special Rapporteur wishes to express his concern over the continued failure of the Government to respond to his communications. The Special Rapporteur continues to receive complaints over the Senator Asif Ali Zaidari case.

Palestine

Communication to the Government

171. On 11 February 2000, the Special Rapporteur sent a communication concerning the situation of some judges and members of the prosecution in the West Bank who have declared a strike. The strike was declared as the result of a mob of people storming the Court of First Instance in Bethlehem on 6 February 2000. The mob locked the judges and the prosecutor inside the court building and demanded that a 15-year sentence imposed on Ibrahim and Nidal Obeyad be withdrawn. It was alleged that some members of the mob were dressed in military clothing.

172. On 17 May 2000, the Special Rapporteur sent a communication concerning the Palestinian Bar Association. On 10 May 2000, the Acting Council of the Palestinian Bar Association notified 31 lawyers that they were being transferred from the list of practising lawyers to the list of non-practising lawyers, depriving them of the right to appear before Palestinian courts. Many of the lawyers removed were from human rights organizations. This decision was taken on the last day before the expiry of the term of the Acting Council, which had been appointed by President Arafat three years previously.

173. On 19 May 2000, the Special Rapporteur sent a communication concerning the situation of lawyer Khader Shkirat who is the Director of the Palestinian Society for the Protection of Human Rights and the Environment (LAW). It was alleged that Brigadier General Tawfeeq Al Tirawi, Chief of General Intelligence in the Northern Districts, had asked the Deputy Head of the Bar to dismiss Mr. Shkirat. The Deputy Head rejected the request and advised Brigadier General Al Tirwai to lodge a formal complaint with the Bar. It was further alleged that in response to a statement by Mr. Shkirat on 27 April 2000 that the weakness of the Bar could be due to the fact that many of its members work for the security forces, the Deputy Head publicly threatened to kill Mr. Shkirat. On 7 May 2000, the Al Hayat Al Jadida newspaper published a statement by the Head of the Bar Association to the effect that a director of an NGO should not be permitted to be a member of the Bar.

174. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communication dated 11 February 2000.

Communications from the Government

175. On 2 June 2000, the Government acknowledged receipt of the Special Rapporteur's communication of 19 May 2000.

176. On 5 June 2000, the Government referred to its letter of 2 June 2000, and the Special Rapporteur's of 17 May 2000, and stated that the Palestinian Authority has nothing to do with the circumstances contained in those communications. The party involved is the Bar Association, in whose internal affairs the Palestinian Authority cannot interfere.

Observation

177. The Special Rapporteur is awaiting a response to his communication of 11 February 2000.

Panama

Communication to the Government

178. On 22 August 2000, the Special Rapporteur sent a communication regarding the situation of a former Justice of the Supreme Court, Mr. Oscar Ceville. Mr. Ceville had been appointed to the Fifth Chamber of the Supreme Court for a period of 10 years. In October 1999, legislation was passed abolishing the Fifth Chamber, and Mr. Ceville lost his judicial office. In November 1999, a petition was lodged challenging the abolishment of the Fifth Chamber of the Supreme Court, but as at the date of the communication, it was alleged that the court had not acted upon the case file.

Communications from the Government

179. On 8 September 2000, the Government replied to the communication concerning Oscar Ceville. The Government informed the Special Rapporteur that the Supreme Court of Justice is currently dealing with or has delivered its verdict in six cases concerning the abolition of the Fifth Chamber of the Supreme Court of Justice. With respect to the petition lodged on 2 November 1999, initially Judge Edgardo Molina Mola was appointed reporting judge, but he declared himself incompetent to assume jurisdiction over the case on 11 November 2000. On 22 November 2000, the Plenary Court ruled this declaration illegal, but Judge Molina Mola took no action in this case and his jurisdiction lapsed on 31 December 1999. He was replaced by Judge Arnulfo Arjona who likewise declared himself incompetent to assume jurisdiction, which was similarly rejected by the Plenary Court on 21 January 2000.

180. On 11 February 2000, the case was declared admissible and the court requested the Procurator-General to provide an opinion, which was provided on 31 March 2000. Counsel was also permitted to submit written argument. On 30 June 2000, the case was referred to the reporting judge to draft a judgement for submission to the Plenary Court. Two other challenges to the constitutionality of Law No. 49 of 24 October 1999, which abolished the Fifth Chamber of the Supreme Court, were lodged on 18 June and 28 June 2000.

181. On 24 October 1999, the Fifth Chamber of the Supreme Court ruled an amparo proceeding brought by Judges Elitza Cedeño, Mariblanca Staff and Oscar Ceville admissible. The Legislative Assembly lodged an application for clarification and amendment of this decision on 28 October 1999. On 25 February 2000, the Plenary Court ruled this application inadmissible and ordered the proceedings to be referred back to the Secretariat of the Supreme Court.

The Court further stated that the grounds of nullity contained in article 722.1 of the Judicial Code, referring to the transfer of jurisdiction, are fulfilled in this case "because the power to exercise jurisdiction over amparo and habeas corpus proceedings conferred on the Fifth Division was reassigned to the Plenary Court, by means of Law No. 49 of 24 October 1999". Pursuant to this the case file is held by Judge Aguilera de Franceschi, after which normal proceedings will continue in due course.

Observation

182. The Special Rapporteur thanks the Government for its response. The abolition of the Fifth Chamber, with its judges not reassigned to another court or given adequate compensation, must be seen as an indirect way of removing judges arbitrarily without due process.

Peru

Communications from the Government

183. On 1 March 2000, the Government responded to the Special Rapporteur's communication of 28 June 1999 (E/CN.4/2000/61, paras. 235-236) concerning Judge Antonia Saquicuray Sanchez (see E/CN.4/2000/61, paras. 235-236). The Government stated that Judge Saquicuray was appointed to the District Judiciary Inspection Commission (ODICMA), in accordance with article 2 of Administrative Decision No. 197-96-SE-TP-CME-PF of 24 May 1996. This provision stipulates that Presidents of the High Courts of Justice, as part of their inspection functions, shall be responsible for appointing judges to the District Judiciary Inspection Commission, on informing the Judiciary Inspection Office. Judge Saquicuray assumed the new post on 14 May 1999, without administrative challenge and will return to the court on completion of her duties.

Observations

184. The Special Rapporteur thanks the Government for its response but notes that it has not responded to the allegations of an improper motive in the transfer.

Senegal

Communication to the Government

185. On 28 July 2000, the Special Rapporteur sent a joint intervention with the Special Rapporteur on torture concerning the trial of Hissène Habré. On 30 June 2000, the Superior Council of the Magistracy was convened, presided over by President Wade and the Minister of Justice. The Council decided to transfer Judge Demba Kandji, the judge responsible for the indictment of Mr. Habré, from his position as Chief Investigating Judge of the Dakar Regional Court to become the Assistant State Prosecutor at the Dakar Court of Appeals. The Council also promoted Cheikh Tidiane Diakhaté, President of the Indicting Chamber, before whom a motion to dismiss the charges against Mr. Habré was sub judice, to the State Council. On 4 July 2000, all charges of torture were dismissed against Mr. Habré. Also, since 12 April 2000,

Madické Niang, Mr. Habré's principal lawyer, had been acting as President Wade's Special Adviser on judicial matters. In view of the seriousness of the matter, the Special Rapporteur issued a press release with the Special Rapporteur on torture expressing their concerns.

Communications from the Government

186. On 9 November 2000, the Special Rapporteur received a reply to his communication. The Government stated that the Indicting Chamber had dismissed the charges against Hisséne Habré without any pressure from the Government, solely on the basis of legal principles in force in Senegal, in particular the principle of territorial jurisdiction. In this connection, the Government recalled that the charges against Mr. Habré related to acts committed outside Senegal. Further, the charges were based exclusively on international law which has no basis in national law. Moreover, the Government stated that the application of the Convention is not automatic, since article 79 of the Constitution acknowledges the superiority of treaties on condition of reciprocal application by other parties to the treaty, evidence of which would be uncertain in the present case. A cassation appeal is available against the judgement.

187. With regard to the concerns expressed, the Government explains that Mr. Diakhaté, who delivered the judgement, was not sitting as a single judge, but that it was the Chamber as a whole that declared the Court had no jurisdiction. His promotion can thus not be seen as a reward for this judgement. Further, the promotion of Mr. Kandji cannot be seen as punishment for the lawful and careful decision of having indicted Mr. Habré. The Government indicates that both promotions should be seen in the light of the seniority and experience of Mr. Diakhaté and Mr. Kandji. With regard to the appointment of Mr. Madicke Niang as the President's Special Adviser, the Government denies any connection with the case against Mr. Habré.

188. As to the independence of the judiciary in general, the Government notes that the judicial power is organized according to the Basic Law, which establishes the security of tenure of judges. All judicial appointments are made upon proposal by the Minister of Justice, after advice from the Superior Council of the Magistracy. This procedure was followed in the present case. The Government observes that no judge can refuse to be transferred to another judicial post on the basis of personal interest, the exigencies of service taking priority. In case a judge challenges an appointment, a judicial remedy is available for abuse of power.

Observation

189. The Special Rapporteur thanks the Government for its response. The timing of the transfer of Judge Demba Kandji gave the appearance of executive interference.

Slovakia

Communications to the Government

190. On 28 September 2000, the Special Rapporteur sent an urgent appeal concerning the situation of Dr. Stefan Harabin. It was alleged that a proposal, approved by the Minister of Justice, had been submitted to the National Council of the Slovak Republic for the removal of

Dr. Harabin. This was stated to be contrary to the Constitution, as none of the grounds for the removal of a judge from office were met in Dr. Harabin's case, and his five-year term had not yet expired.

191. On 13 October 2000, the Special Rapporteur sent a follow-up urgent appeal concerning Dr. Stefan Harabin. The Special Rapporteur stated his view that appointments to the position of Vice-President or President of a court constitute a promotion and judges in these positions should be subject to removal only on the grounds contained in the Constitution, otherwise their fixed term of appointment would be meaningless.

192. On 1 November 2000, the Special Rapporteur sent a communication requesting, in light of the Government's communication of 23 October 2000 and his continuing concerns about the situation, permission to conduct an in situ mission in the week commencing 20 November 2000.

Communications from the Government

193. On 23 October 2000, the Government responded to the Special Rapporteur's urgent appeals dated 28 September and 13 October 2000. According to the Slovak Constitution and Act No. 335/1991 on Courts and Judges, the President and Vice President of the Supreme Court shall be elected for a period of five years, based on the proposal of the Government, and can be recalled from those positions. The recall from such a position does not, however, result in loss of the position as judge of the respective court. The Council of Judges of the Supreme Court and the Council of Judges of the Slovak Republic issue opinions on proposed judicial appointments that have only an advisory character.

194. The Government stated that when Dr. Harabin was elected President of the Supreme Court in February 1998, both the Council and the Association of Judges expressed a negative opinion on his appointment. The Government also cited other incidents as calling into question Dr. Harabin's credibility and providing a basis for removal. Dr. Harabin did not participate in Ministry of Justice initiatives to eliminate corruption from the justice system and expressed negative views on the measures adopted. In 1999, Dr. Harabin refused to fill in a statement concerning his personal finances, claiming the request had no legal basis. In a letter to the head of the unit in charge of Slovakia's application for EU membership dated 16 June 2000, Dr. Harabin claimed that, in the opinion of the Supreme Court, the Council of Judges of the Supreme Court and many other judges, the proposed amendments to the Slovak Republic Constitution are not consistent with the separation of powers. The Government stated that the Council of Judges of the Slovak Republic and the Association of Judges of the Slovak Republic support the proposed amendments. The Government further cites the decision of the Constitutional Court No. II-US 17/00 of 15 March 2000, which declared the removal of the Vice-Chairman of the Supreme Court by the Government to be constitutional.

195. On 6 November 2000, the Government acknowledged receipt of the request for a mission and informed the Special Rapporteur that the request had been sent to the appropriate authorities. The mission of the Special Rapporteur took place from 27 to 30 November 2000.

Observations

196. For further reference please see the report of the mission to the Slovak Republic (E/CN.4/2001/65/Add.3).

South Africa

197. Since the conclusion of the mission to South Africa the Special Rapporteur has received information that the policy unit of the Ministry of Justice has produced a draft Legal Practice Bill. This has been described by the Minister of Justice as a "draft working document", for discussion purposes only. The present draft is in fact the third draft.

198. Controversy has arisen over the composition of the statutory council, headed by a judge, that will effectively assume the power and functions of the four provincial law societies that exist to represent attorneys, the Law Society of South Africa, as well as the General Council of the Bar which represents advocates. Of concern to the lawyers is that this proposed statutory council will be composed of persons the majority of whom are not from the ranks of the legal profession and is viewed as a threat to an independent legal profession.

199. The Government is reported to have justified such a composition on the basis of comparative legislation which establishes councils in the health, accounting, engineering, architecture, estate agency and quantity surveying professions and which have a similar composition.

200. The Special Rapporteur has written directly to the Minister of Justice expressing his concerns and has clarified why the legal profession in a democratic society is different from the other professions.

201. The Special Rapporteur will continue to monitor developments.

Spain

Communications to the Government

202. On 13 October 2000, the Special Rapporteur sent a communication concerning the murder of the Chief Prosecutor of the Andalucia Regional Court, Mr. Luis Portero. On 9 October 2000, Mr. Portero was murdered outside his house in Granada, allegedly by the Basque separatist group Euzkadi Ta Askatasuna (ETA).

203. On 11 November 2000, the Special Rapporteur sent a communication concerning the murder of Supreme Court Justice José Francisco Querol, also allegedly by ETA. The Special Rapporteur noted that although he is aware that the Government is concerned about these developments, it is necessary that the Government take appropriate steps to ensure that members of the judiciary, prosecutors and lawyers are provided with adequate security.

Communication from the Government

204. On 8 December 2000, the Government responded to the Special Rapporteur's communication of 13 October 2000. The Government stated that it provides proper protection to prosecutors and judges as it does to all citizens. In relation to the murder of Dr. Luis Portero, the State security forces had detained those thought to be responsible for the murder, who are waiting to be tried.

Observation

205. The Special Rapporteur thanks the Government for its response.

Sri Lanka

Communications to the Government

206. On 17 January 2000, the Special Rapporteur sent a communication concerning the murder of lawyer Kumar Ponnambalam. Mr. Ponnambalam, a prominent lawyer who represented many clients in human rights cases, was shot five times on 5 January 2000. It was alleged that he was assassinated because of his effective defence of his clients.

207. On 11 August 2000, the Special Rapporteur sent a follow-up letter regarding the murder of lawyer Kumar Ponnambalam.

208. In his report to the Commission (E/CN.4/2000/61, paras. 251 and 259) the Special Rapporteur referred to the controversy over the appointment of the Chief Justice, who had been the former Attorney-General. The Special Rapporteur also referred to two petitions before the Supreme Court to strike the Attorney-General off the roll of advocates for misconduct. The Special Rapporteur has been informed that the petitions have not been heard. Preliminary objections on the composition of the Supreme Court to hear the petitions have been heard but no judgement has been delivered.

Communication from the Government

209. On 18 August 2000, the Government responded to the Special Rapporteur's communication of 11 August 2000. The Government informed the Special Rapporteur that the assassination of Mr. Ponnambalam was under judicial investigation and that further details would be communicated once judicial investigations were completed.

Observations

210. The Special Rapporteur expresses concern over the delay in investigations into the murder of Kumar Ponnambalam and calls upon the Government to expedite and apprehend the perpetrators of this brutal murder.

211. In his sixth report to the Commission on Human Rights (E/CN.4/2000/61, para. 252) the Special Rapporteur referred to the urgent appeal he sent to the Government concerning the criminal prosecution of Dr. Jayalath Jayawardena, a member of Parliament. In an addendum to the same report (E/CN.4/2000/61/Add.2) the Special Rapporteur referred to the Government's communication in response.

212. The Special Rapporteur is pleased to report that Dr. Jayawardena was acquitted of the charges in the first prosecution. The second prosecution, on similar charges, has not been withdrawn. That prosecution has been fixed for trial on 26 February 2001.

United Kingdom of Great Britain and Northern Ireland

213. The Special Rapporteur continues to monitor closely the investigations into the appalling murders of Rosemary Nelson and Patrick Finucane and the continuing harassment of defence lawyers in Northern Ireland.

214. During the fifty-sixth session of the Commission on Human Rights the United Kingdom Government stated that it would not respond during the Commission to the concerns contained in the Special Rapporteur's general report (E/CN.4/2000/61, paras. 303-322); rather, it would respond directly to the Special Rapporteur at a later date. The Special Rapporteur regrets that as at the date of the writing of this report, he had not received a response.

Murder of Patrick Finucane

215. The investigation by Sir John Stevens, Commissioner of the Metropolian Police, continued during the year without reaching a final conclusion. William Stobie, who was charged with the murder of Patrick Finucane in June 1999, is now expected to stand trial, only for aiding and abetting in the murder, later in 2001. In this respect, the Special Rapporteur wishes to refer to the concerns raised in his report to the fifty-sixth session of the Commission on Human Rights (E/CN.4/2000/61, paras. 315 and 316). No further arrests were made during the year for the murder, although there were reports of charges being laid for connected incidents of "possession of information useful to terrorists".

216. On 1 March 2000, the Special Rapporteur received a communication from the Stevens Investigation office stating that Deputy Assistant Commissioner Hugh Orde had taken over the day-to-day responsibility for the investigation. The Special Rapporteur met with the Deputy Assistant Commissioner in Geneva on 9 June 2000, when matters concerning the status of the investigations were discussed. The Special Rapporteur requested that the reports of the previous investigations carried out by Sir John Stevens be released to him.

217. On 14 June 2000, the Deputy Assistant Commissioner indicated in a letter that the Chief Constable of the Royal Ulster Constabulary (RUC) did not think it would be appropriate to release the Stevens reports, both I and II, to the Special Rapporteur.

218. On 5 October 2000, the Special Rapporteur again met the Deputy Assistant Commissioner in Belfast where the status of the investigations were discussed. In a communication on 6 October 2000, Mr. Orde clarified the fact that the "Stevens III" investigation is the first and only time that Sir John Stevens had been requested by the Chief Constable of the RUC to investigate the murder of Patrick Finucane. While the murder of Mr. Finucane would have featured in the previous investigations, "the clear and absolute responsibility" lay with the RUC until 19 April 1999.

219. On 11 September 2000, the Special Rapporteur sent a letter to Prime Minister, Tony Blair following the Prime Minister's meeting with the Finucane family and the representatives of British Irish Rights Watch and the Committee on the Administration of Justice. The Special Rapporteur expressed his concern over the murder of Patrick Finucane and reiterated his call for an independent public inquiry. The Special Rapporteur stated that "from the information and facts I have gathered there is reason to believe that at the material time the relevant authorities in Northern Ireland knew or ought to have known that Patrick Finucane's life was threatened". Further, the allegations of possible collusion between military intelligence and the RUC cannot be dealt with fully by the current police investigation. This form of investigation can only investigate criminal offences and therefore will not result in recommendations to prevent such malpractice in the future; this can only be achieved by a public inquiry. To date the Special Rapporteur has not received a response from the Prime Minister.

Murder of Rosemary Nelson

220. The investigation into the murder of Rosemary Nelson also continued this year without reaching a final conclusion. The investigation has continued for two years and cost an estimated £3 million. The Special Rapporteur has had meetings with Mr. Colin Port who is leading the investigations into the murder. Though considerable progress is said to have been made towards identifying the perpetrators, it remains to be seen whether sufficient evidence will be available for a successful prosecution. The Special Rapporteur is also concerned about possible leaks from the investigation that may be undermining the integrity and efficacy of the investigation.

221. The Special Rapporteur is particularly concerned about the continuing failure of the Chief Constable of the RUC to respond in writing to questions asked by various NGOs regarding the steps taken to investigate the threats made against Rosemary Nelson before her death. The Special Rapporteur has been informed that the Committee on the Administration of Justice has lodged a confidential complaint with the Police Ombudsman for Northern Ireland regarding the alleged failure of the Chief Constable of the RUC to properly investigate the threats made against Rosemary Nelson prior to her murder.

Harassment of defence lawyers

222. On 19 July 2000, the Special Rapporteur sent a communication regarding the safety of lawyer Padraigin Drinan. According to the information received, members of the RUC in Lurgan had threatened to charge Ms. Drinan with obstruction in the context of the professional advice she provided to her clients. Further, although Ms. Drinan had been accepted under the

Key Persons Protection Scheme as a person at risk of being subjected to violence, sufficient security measures were not in place. At that time, during "marching season", the implementation of security measures had only been partially completed and others were not going to be completed until the end of the year.

223. On 15 November 2000, the Government responded to the Special Rapporteur's communications of 19 July and 26 October 2000. The Government stated that after initial difficulties in arranging an appointment to conduct a site meeting to discuss necessary security measures, an appointment was made on 21 April 2000. After this meeting, and after a determination of costs was made, the work was approved on 25 May 2000. Construction Services contacted Ms Drinan but were informed that she was unavailable until 20 June 2000. On that date Ms. Drinan was informed that some security measures would be installed before the contractors' July holidays, but others could not. Ms. Drinan expressed concern and was advised to contact the Police Division to arrange interim protection measures. Ms. Drinan denies being advised of the delays.

224. On 28 June 2000, Ms. Drinan expressed concern to the Police Division that the work had not commenced. The work commenced on 29 June 2000. Also on 29 June 2000, Ms. Drinan was informed that a new front door could be installed on 5 July 2000, and was offered interim protection measures. Ms. Drinan refused these stating that 5 July was too late as the Drumcree march would have started by then.

225. The Government also informed the Special Rapporteur that police investigations into two incidents involving Ms. Drinan were being supervised by the Independent Commission for Police Complaints. The investigations concern an incident that took place between Ms. Drinan and RUC officers at Lurgan Station on 1 July 2000 and a second incident on 24 July 2000 when Ms. Drinan's car was forced off the road by an unmarked vehicle in the Lurgan area.

226. The Police Ombudsman for Northern Ireland, Ms. Nuala O'Loan, indicated in a letter dated 10 November 2000 that she was conducting a review of these matters.

Review of the criminal justice system in Northern Ireland

227. In March 2000, the Review of the Criminal Justice System in Northern Ireland was completed and its report published. The Special Rapporteur would like to note chapter 3, paragraph 53 of that report which states, inter alia, "We agree with the Special Rapporteur on the Independence of Judges and Lawyers that government has a responsibility to provide the machinery for an effective and independent investigation of all threats made against lawyers and note the role of the Police Ombudsman if such allegations relate to the actions of police officers. Further, we endorse his recommendation that training seminars should be organized to enable police officers and members of other criminal justice agencies to appreciate the important role that defence lawyers play in the administration of justice and the nature of their relationship with their clients."

Observations

228. The Special Rapporteur reiterates his earlier calls for a judicial commission of inquiry into the Patrick Finucane murder. It is now nearly two years since the murder of Rosemary Nelson. Though some progress is said to have been made, the delay in concluding the investigations is a source of concern. In order to avoid any allegation of impunity being levelled against the Government over these murders, it is in its interest to set up a judicial commission of inquiry into both murders. The Government of the United Kingdom of Great Britain and Northern Ireland must be seen as a role model for accountability and transparency in the administration of justice.

229. The Special Rapporteur urges the newly appointed Police Ombudsman to review all complaints by defence lawyers against RUC officers.

United States of America

Communications to the Government

230. On 3 February 2000, the Special Rapporteur sent a communication regarding the case of Ms. Betty Lou Beets. Ms. Beets was sentenced to death in 1985 for the murder of her husband after a trial in which crucial mitigating evidence was never presented to the jury, including her history of severe physical and sexual abuse. On appeal in the Federal Court, evidence was presented that showed that Ms. Beets' trial attorney was guilty of grossly unethical behaviour and conflict of interest which had contributed to her death sentence. The trial attorney held crucial information that disproved the prosecution's allegation that Ms. Beets killed her husband for remuneration. He refused to withdraw from the case and instead signed an agreement with Ms. Beets providing him with all media rights to her story as his fee for representing her at trial. In 1991 a federal district judge ruled that the trial attorney's behaviour breached Ms. Beets' right to adequate counsel; this was reversed by the 5th Circuit Court of Appeals.

231. On 21 August 2000, the Special Rapporteur sent an urgent appeal regarding the imminent execution of Alexander Edmund Williams. The information received highlighted the ineffective and incompetent performance of Mr. Williams' state-appointed attorney during the sentencing phase of his trial. The attorney failed to investigate his client's background or interview family members and so failed to discover the history of mental and physical abuse that Mr. Williams had suffered as a child. The Special Rapporteur drew attention to the fact that this was not the first case that had been brought to his attention where the incompetence of a state-appointed attorney seemed to have lead to the imposition of the death penalty. Due to the seriousness and urgency of the matter the Special Rapporteur issued a press release expressing his concerns.

Communications from the Government

232. On 25 February 2000, the Government responded to the communication concerning Ms. Betty Lou Beets. The Government stated that issues concerning the unethical behaviour of Ms. Beets' trial attorney had been argued extensively at in all levels of the proceedings, at both

the state and federal levels. The United States Fifth Circuit Court of Appeals concluded that whilst the actions of Ms. Beets' trial attorney may have been unethical, they did not amount to a constitutional violation. The Court further stated that Ms. Beets and two other witnesses presented evidence at trial, which indicated that Ms. Beets did not know about her husband's insurance. Therefore, her attorney's failure to withdraw was not in any way prejudicial. The Fifth Circuit Court of Appeals further held that there was sufficient additional evidence to convict her of murder for remuneration.

233. On 29 August 2000, the Government responded to the communication concerning the trial of Alexander Edmund Williams. The Government stated that five courts, state and federal, had rejected the argument that the ineffective assistance provided by Mr. Williams' trial attorney resulted in the imposition of a capital sentence. The Government also informed the Special Rapporteur that the Georgia Supreme Court indefinitely stayed Mr. Williams' execution on 22 August 2000.

Observation

234. The Special Rapporteur thanks the Government for its prompt response. The order of the Supreme Court of Georgia to stay the execution in the Williams case is most welcome. The Special Rapporteur continues to be concerned over the spate of convictions and death sentences alleged to be due to the incompetence of defence counsel.

Yemen

Communication to the Government

235. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communication dated 11 January 1999 (E/CN.4/2000/61, para. 323).

Communication from the Government

236. On 20 November 2000, the Government responded to the Special Rapporteur's communication of 26 October 2000. The Government stated that the trial of Abdul Hassan al-Mehdar and his associates was carried out in accordance with Yemeni law, in public; the accused were given free contact with their lawyers during detention and were represented by lawyers at trial. In the case concerning some persons, including British citizens, who were allegedly involved in planning bomb attacks in Aden, the accused had the right to contact their lawyers and were represented in court. The court addressed the allegations of torture, declaring that they were unsubstantiated on the basis of testimony of a medical examiner.

Observations

237. The Special Rapporteur thanks the Government for its response.

Yugoslavia

Communications to the Government

238. On 3 May 2000, the Special Rapporteur sent a communication regarding a lawyer, Husnija Bitic. On 17 March 2000, four masked men entered the Belgrade apartment of Mr. Bitic and threatened and seriously injured Mr. Bitic and his wife. It was alleged that Mr. Bitic was targeted because of his representation of Kosovar Albanian prisoners currently held in detention in Serbia.

239. On 26 October 2000, the Special Rapporteur sent a follow-up communication to the Government noting that a response had not been received to the communications dated 2 November 1999 (E/CN.4/2000/61, para. 325) and 3 May 2000.

240. The Special Rapporteur has taken note of the report to the General Assembly (A/55/282) of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. It was reported that federal and republican authorities continue to use the judicial and legal systems to legitimize political repression and criminalize opposition activity, civil society and the expression of dissent. In connection with mass arrests that took place earlier in the year, nine lawyers were being prosecuted before Serbian courts. On 12 July 2000, the Serbian parliament relieved 13 court officials, mostly judges, of their duties. These judges were noted for their independence.

241. The report also noted that the United Nations Interim Mission in Kosovo (UNMIK) had only been able to hire 5 out of the 12 judges, and 2 out of the 5 prosecutors required. The report considered that the filling of these positions should be pursued on an urgent basis and that UNMIK should consider the appointment of highly qualified international lawyers to fill the positions.

Observation

242. The Special Rapporteur expresses concern over the failure of the Government to respond to his communications.

Zimbabwe

243. The Special Rapporteur views with grave concern the attacks on the judiciary in Zimbabwe, in particular the Supreme Court and its judges, arising from recent judgements of the Court with respect to the Governments seizure of land owned by white farmers without the paying of compensation. Statements in the media attributed to high-ranking government officials, including ministers, about the Supreme Court, and particularly its white judges, are seen as threats to the independence of the judiciary.

244. The Special Rapporteur has communicated his concerns to the Government and will, as agreed with the Government, undertake a mission to Zimbabwe as soon as possible.

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

245. This mandate is very research intensive. Both structuring an in situ mission and evaluating the information gathered during and after the mission require skilled human resources. As will be seen from some of the country situation reports, follow-up on communications from the Governments has been dismal. This again is due to insufficient human resources at the Office of the High Commissioner for Human Rights.

246. Some complaints need urgent and prompt intervention to prevent damage rather than intervention after damage. The urgent intervention in Slovakia was undertaken on this premise and it was found to be effective. Again, for such speedy interventions and constant monitoring, human resources, in addition to financial resources, are imperative.

247. The Special Rapporteur intends to undertake three missions this year, to Mexico, Saudi Arabia and Zimbabwe. These are missions that the respective Governments agreed to and confirmed at the fifty-sixth session of the Commission on Human Rights.

248. Judicial accountability is becoming an issue of importance in several countries, often leading to tension between the Government and the judiciary. This tension between judicial independence and judicial accountability needs to be addressed to provide certain parameters so that judicial independence is not undermined. Standards may need to be formulated to guide a sound system for accountability. Resources permitting, the Special Rapporteur intends to address this issue in the next two years with the assistance of some experts.

249. From the country situation reports it will be noted that some Governments are slow in their responses to communications and some do not respond at all. Reminders are also ignored.

B. Recommendations

250. With regard to the United Kingdom and Northern Ireland, the Special Rapporteur recommends that an independent judicial inquiry to investigate the murders of Patrick Finucane and Rosemary Nelson be established. The Special Rapporteur once again urges the Government to make public the second report of John Stevens on the Patrick Finucane murder and the Mulvihill report on the investigations into the complaint lodged by Rosemary Nelson with the RUC.

251. In paragraph 4 of resolution of 1994/41 creating the mandate, the Commission urged all Governments to assist the Special Rapporteur in the discharge of his mandate and to transmit to him all the information requested. In the spirit of this paragraph, the Special Rapporteur once again appeals to Governments to respond to his interventions promptly and to respond positively to his requests to undertake in situ missions.

252. The Special Rapportuer calls on Governments, national judiciaries, bar associations and NGOs to submit to him any court judgements and any legislation affecting the independence of the judiciary and the legal profession for his consideration. The Special Rapporteur welcomes this information irrespective of whether such judgements and legislation have the effect of enhancing or restricting the independence of judges and lawyers.

- - - - -